

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC.,

Plaintiff,

V.

## SR INTERNATIONAL BUSINESS INSURANCE CO., LTD.,

Defendant.

No. C05-1177P

ORDER DENYING PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Plaintiff's Motion for Reconsideration. (Dkt. No. 34).

On November 29, 2005, this Court issued an Order Denying Defendant's Motion to Dismiss and Granting Defendant's Motion to Stay. (Dkt. 32). On December 30, 2005, this Court issued an order calling for a response to Plaintiff's Motion for Reconsideration and setting forth a briefing schedule for the response and reply to that motion.(Dkt. No. 35).

Plaintiff argues in its Motion for Reconsideration that the Court erred by not acknowledging Seattle to be an agreed-upon site for arbitration of this matter. Plaintiff also asserts that the Court's ruling creates a heightened pleading requirement that would require plaintiffs everywhere to mention the non-arbitrability of a dispute in their complaints or risk forum-shopping by defendants. Plaintiff contends that this requirement would cause plaintiffs everywhere to lose the chance at getting defendants to waive arbitrability and encourage forum-shopping. Defendant argues that Plaintiff should have made this argument in the original round of briefing and that this Court has the flexibility to stay this case and allow the arbitration issue to proceed in Illinois, where arbitration in this case has

1 already commenced. Notwithstanding Plaintiff's argument, the Court finds that the first to file rule is  
 2 a flexible one and that the interests of judicial economy support allowing the action in the Illinois  
 3 Court to proceed. Reconsideration is DENIED.

4 **Analysis**

5 In this Court's Order calling for a response to Plaintiff's Motion, the Court acknowledged  
 6 that it erred factually by not recognizing Seattle as an agreed-upon site of arbitration by the parties.  
 7 Plaintiff also argues that this Court's order staying this case creates a heightened pleading  
 8 requirement for plaintiffs everywhere because one of the factors that the Court took into  
 9 consideration was that the arbitration issue was explicitly before the court in Illinois before it was  
 10 raised in this Court. (Pl's Mot. at 2). Plaintiff asserts that this ruling constitutes manifest error on the  
 11 part of the Court because Plaintiff filed its Complaint before this Court on June 30, 2005, while the  
 12 Illinois action was not commenced by Defendant Swiss Re until September 6, 2005. Plaintiff points  
 13 out that Defendant raised the issue of arbitration in this Court on August 22, 2005.

14 While the Court noted that Amazon's action had been filed in this Court first, it also noted  
 15 that the "first to file" rule is a flexible one that should take into account considerations of judicial  
 16 economy. (Dkt. No. 32 at 5) (citing Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F. 2d 93, 94-95  
 17 (9<sup>th</sup> Cir. 1982)). The Court's assessment of judicial economy was based on the fact that an arbitration  
 18 demand had been filed in Illinois. For this reason, allowing the Illinois court to proceed with this  
 19 action seemed to be the most efficient use of judicial resources. This analysis does not depend upon  
 20 whether or not the Court recognized Seattle as a potential locus for arbitration. Accordingly, the  
 21 Court DENIES reconsideration. All matters in this case are stayed pending the resolution of the  
 22 arbitrability issue by the Illinois Court. The Clerk of the Court shall direct a copy of this order be sent  
 23 to all counsel of record.

24 Dated: March 7, 2006.

25   
 26 Marsha J. Pechman  
 United States District Judge